

PT 02-32

Tax Type: Property Tax

Issue: Charitable Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

LUTHERAN HOME, INC.)	A.H. Docket #	99-PT-0060
Applicant)	Docket #	99-72-03
)	Parcel Index #	14-10-378-005
v.)		
)		
THE DEPARTMENT OF REVENUE)		
OF THE STATE OF ILLINOIS)		

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. Brent H. Gwillim of Heyl, Royster, Voelker and Allen for Lutheran Home, Inc.

Synopsis:

The hearing in this matter was held to determine whether Peoria County Parcel Index No. 14-10-378-005 qualified for exemption during the 1999 assessment year.

Mr. Ronald Jaeger, executive director and chief executive officer of the Lutheran Home, Inc. (hereinafter referred to as the "Applicant") was present and testified on behalf of applicant. The issues in this matter include, first, whether applicant was the owner of the real estate during the 1999 assessment year; secondly, whether the applicant is a charitable organization; and lastly, whether this property was used by applicant for exempt purposes during the 1999 assessment year. After a thorough review of the facts and law presented, it is my recommendation that the requested exemption be denied. In support thereof, I make the

following findings and conclusions in accordance with the requirements of Section 100/10-50 of the Administrative Procedure Act (5 **ILCS** 100/10-50).

FINDINGS OF FACT:

1. The jurisdiction and position of the Department that Peoria County Parcel Index No. 14-10-378-005 did not qualify for a property tax exemption for the 1999 assessment year was established by the admission into evidence of Dept. Ex. No. 1. (Tr. p. 11)

2. On June 24, 1999, the Department received the request for exemption for Peoria County Parcel Index No. 14-10-378-005. On September 10, 1999, the Department denied the requested exemption finding that the property was not in exempt ownership and not in exempt use. Applicant timely protested the denial and requested a hearing. The hearing held on December 15, 2000, was in response to that request. (Dept. Ex. No. 1)

3. The Lutheran Home of Greater Peoria acquired 28 acres that include the 12 acres at issue, by a warranty deed dated November 11, 1985. In 1986 the facilities on the 28 acres consisted of a 50 resident retirement center and the Lutheran Home, a skilled nursing facility. Through 1998 the 12 acres at issue were leased as farmland. The lease was terminated at the end of 1998. (Dept. Ex. No. 1; Applicant's Ex. Nos. 5, 12; Tr. pp. 16-18, 20, 27, 39-42, 54-55, 100)

4. Applicant's development of the subject property followed its studies, including one in 1997 concerning market feasibility, of the housing needs of an aging population. At the time of the study, the applicant's living areas on the 28 acres consisted of 21 independent living duplex units, 44 retirement center rooms, and 88 nursing beds. (Applicant's Ex. Nos. 1, 3)

5. The study recommended the development of apartments, assisted living units, and a designation of units for dementia care. (Applicant's Ex. No. 1; Tr. pp. 43-44)

6. Following approval by its Board of Directors during an annual meeting in January, 1998, the applicant was restructured, creating Lutheran Senior Ministries, Inc. as the parent corporation with

Lutheran Senior Ministries Foundation, Lutheran Estates Organization, Lutheran Assisted Living Organization, and the applicant as corporate subsidiaries. The purpose for Lutheran Senior Ministries Foundation is fundraising and public relations; the purpose of Lutheran Estates Organization is to administer independent living; the purpose of Lutheran Assisted Living Organization is to administer assisted living; and the purpose of applicant is to administer licensed care. All of these entities are exempt from federal income taxation pursuant to 501(c)(3) designations by the Internal Revenue Service. (Dept. Ex. No. 1; Tr. pp. 25-27)

7. Applicant was formally known as The Lutheran Welfare Council of Greater Peoria, incorporated under the General Not for Profit Corporation Act of the State of Illinois on March 8, 1960. Articles of amendment filed June 6, 1977, changed its name to the Lutheran Home of Greater Peoria. That name was again changed to that of the applicant on February 9, 1998. (Dept. Ex. No. 1)

8. Applicant's Articles of Incorporation provide, in part:

The purpose or purposes, for which the corporation is organized, are:

Religious and Civic, and in the furtherance of said purposes the corporation shall have power.

- (a) To foster, develop, operate and maintain an adequate program and services for elderly persons.
- (b) To provide elderly persons on a non-profit basis, with housing facilities and services, specially designed to meet the spiritual, physical, social and psychological needs of the aged, and contribute to their health, security, happiness and usefulness in longer living.
- (c) To construct, operate, maintain and improve, and to buy, own, sell convey, assign, mortgage or lease any real estate and any personal property necessary or incident to the provision of housing for the elderly.

- (d) To borrow money and issue evidences of indebtedness in furtherance of any or all of the objects of its business; to secure the same by mortgage, pledge or other lien.
- (e) To apply for and obtain or cause to be obtained from the Federal Housing Commissioner hereinafter called the "Commissioner," a contract or contracts of mortgage insurance pursuant to the provisions of Section 208 of Title II of the National Housing Act, as amended, as it applies to housing, especially designed for the use and occupancy of elderly persons, covering bonds, notes and other evidence of indebtedness issued by this corporation and any other indenture of mortgage securing the same.
- (f) To enter into any kind of activity, and to perform and carry out contracts of any kind necessary to, or in connection with, or incidental to the accomplishment of any one or more of the non-profit purposes of the corporation.
- (g) Also, the corporation has such powers as are now, or may hereafter be granted by the General Not for Profit Act of the State of Illinois. (Dept. Ex. No. 1)

9. Lutheran Estates Organization, a current corporate subsidiary, was originally known as The Lutheran Home Towers of Greater Peoria. It was incorporated under the General Not for Profit Corporation Act on October 6, 1983, with the intent of constructing a new facility for the elderly. The Articles of Incorporation of Lutheran Estates Organization are virtually identical to those of the applicant. (Dept. Ex. No. 1)

10. On July 30, 1997, applicant executed an operating agreement with Elerbe Becket, Inc., architect, to develop a master plan for the development of the subject property. (Applicant's Ex. No. 1; Tr. pp. 41-42, 45)

11. In 1999 applicant began the expansion of its "Lutheran Home" facilities. Applicant refers to the entire 28-acre complex that contains the subject real property as Lutheran

Hillside Village. Soil borings were taken in 1999 to make sure the land would support further construction. In 1999 Austin Engineering was hired to do engineering work on the premises. A side by side trailer unit was moved to the site as an information center for pre-marketing and receiving deposits for units to be developed on the property. A construction trailer was also on the property. Construction had commenced by the end of 2000. (Dept. Ex. No. 1; Applicant's Ex. No. 8; Tr. pp. 27, 36, 39-41, 78, 87-88, 100)

12. THERE ARE THREE PARTS TO THE DEVELOPMENT OF BUILDING DOCUMENTS. THE FIRST PHASE CONSISTS OF THE SCHEMATIC DESIGN, WHICH IS A SUMMARY ARCHITECTURAL DEFINITION OF THE BUILDING. THE SECOND PHASE IS THE DESIGN DEVELOPMENT PHASE IN WHICH THE ELECTRICAL, AIR HANDLING, AND ADDITIONAL ENGINEERING FUNCTIONS ARE ADDED INTO THE INITIAL ARCHITECTURAL DEFINITION. THIS PHASE ENABLES A DESIGN TO BE IMPLEMENTED WITHIN THE BUDGET ESTABLISHED. THE THIRD PHASE IS THE CONSTRUCTION DOCUMENTS PHASE WHERE BIDS ARE TAKEN ON THE BUILDING. (APPLICANT'S EX. NO. 9; TR. PP. 50-54)

13. Lutheran Senior Ministries, the parent corporation, and the Weitz Company, Inc. executed an "AIA Standard Form of Agreement Between Owner and Construction Manager" on August 10, 1999, for "Phase One" of Lutheran Hillside Village. At that time, phase one consisted of 120 congregate housing apartments, two eight-unit mansion homes, 10 cottages and support facilities to be located on the property at issue. (Applicant's Ex. No. 1; Tr. pp. 46-47)

14. Weitz completed the booklet entitled "Design Development Closure Document" for Hillside Village in August 2000. Applicant anticipates the cost for the project will be \$34,146,671.00. Ultimately, the construction of the project will be financed through tax-exempt bonds. (Applicant's Ex. No. 9; Tr. pp. 52-54, 103)

15. Lutheran Estates Organization, one of the subsidiary corporations, and Freeman White, Inc. executed a "Standard Form of Agreement Between Owner and Architect" for

Hillside Village on October 6, 1999. The agreement was revised on December 16, 1999, and February 29, 2000. The agreement is for the following: a two story community center of approximately 27,700 SF in gross building area; a four story apartment building containing 120 units and ancillary support facilities; two (2) two story “Mansions” (Villas) with each building will contain eight (8) units; and, twelve (12) Cottages (Patio Homes). (Applicant’s Ex. No. 6; Tr. pp. 46-48)

16. Various types of units, including garages and carports, will be developed on the subject property to accommodate various individual budgets. (Tr. p. 31)

17. The units on the subject property, as well as units located elsewhere on the 28 acres, are publicly marketed, and pre-construction deposits have been received since 1999. (Applicant’s Ex. No. 2, e.g. regarding payments: to Customer Potential Marketing for mailer to specific households based upon age and income criteria; to Journal Star and Channel 25 for advertisements for subject property; for a luncheon held for persons who had made the pre-construction, ten percent deposit for units; to a photographer for promotional materials for advertising; Tr. pp. 36, 61, 86-92)

18. On September 21, 1999, the Peoria City Council approved City Ordinance No. 14,812 to amend the special use zoning on the subject property to include elderly housing, nursing home expansion, congregate living apartments, retirement homes, child and adult day care, and associated facilities. (Applicant’s Ex. No. 2; Tr. pp. 55-58)

19. In 1999, Lutheran Senior Ministries spent \$856,666.89 for the development, preparation for construction, and some actual construction on the subject real property. The current work is being funded by a line of credit through a local lending institution. (Applicant’s Ex. No. 2; Tr. pp. 82-94, 103)

20. Applicant intends that development costs will be borne by current, as well as new residents of units on the entire 28 acres. (Tr. p. 96)

21. If a potential resident wishes to occupy a unit in the independent living area, an

entry fee, that is a significant portion of the capital development costs for the unit, is assessed. Monthly service fees are assessed beginning the day the unit is available for occupancy. A contract between the resident and Lutheran Estates Organization is executed. (Dept. Ex. No. 1; Applicant's Ex. No. 4)

22. The contract for a patio home to be constructed on the subject property requires that the potential resident pay an entrance fee for construction of the unit of \$280,986.00, payable by a ten (10%) percent deposit upon the execution of the agreement. The balance is due when the unit is available for occupancy, but prior to the resident taking possession. Interest accumulating prior to residency is returned to the resident. The contracts for the villas and apartments to be constructed on the subject property are similar but vary slightly from that for a patio home. The contracts all contain a partial refund provision. (Applicant's Ex. No. 4; Tr. pp. 60-63, 104)

23. The contract for the patio home states that the resident obtains no title to or acquires no greater interest in the residence other than the possessory use of the unit. (Applicant's Ex. No. 4)

24. The anticipated monthly service fee for the patio home, according to the contract, was \$875.00 with an additional \$75.00 for a second resident. The monthly service fee includes utilities, emergency communication, catastrophic protection plan participation,¹ building and ground maintenance, appliance repair and maintenance, community center access and use, concierge services, scheduled transportation, trash and snow removal, priority access to assisted living and healthcare services, and a variety of spiritual, social, educational, recreational, and wellness programs. Additional services are available at additional costs. The fees for monthly services and additional services are subject to change at any time with thirty (30) days written notice to the resident. A resident is still responsible for the monthly fee if temporarily admitted

¹ The plan has to do with skilled and intermediate nursing care benefits for a resident after a qualifying period of 500 continuous days of skilled or intermediate nursing care has been met.

to the Lutheran Home or Lutheran Assisted Living facility, or any other health care facility. (Applicant's Ex. No. 4)

25. The additional services available include housekeeping, beauty and barbershop, transportation, routine inside maintenance, activities and social functions, food service, and utilities. All are supplied at an additional charge². (Dept. Ex. No. 1; Applicant's Ex. No. 4; Tr. pp. 59-60, 62)

26. If a default occurs, the resident is entitled to a proportion of the entrance fee, depending upon the circumstances of the default. At a minimum, Lutheran Estates Organization retains a \$500.00 administration fee and the interest on the deposit. The contract provides for a partial refund to the resident upon the termination of the agreement. The minimum refund to the resident is 90% of the entrance fee, which would occur after 24 months occupancy in the patio home. (Applicant's Ex. No. 4; Tr. pp. 60-62)

27. The entrance fee for an apartment on the subject property starts at \$100,000.00. The entrance fee is an "up front" requirement and no one who has applied could not afford the fee. There is no provision for a waiver of fees on the entry process. The entry fees are based on the fair market value of the units at the time of sale, so if the property is resold in the future, the price of that unit is adjusted accordingly. (Applicant's Ex. No. 1; Tr. pp. 104-106)

28. The contracts contain a provision for a late payment fee per month of all fees and charges outstanding for more than thirty days after a date specific. Non-payment of any fees, charges, or penalties constitutes a breach of the contract. In addition, an administrative fee is imposed in the event of default. In the event the resident defaults in the performance of any and all conditions and covenants of the agreement and such default is not cured by the resident within ninety days after written notice to the resident from the Lutheran Estates Organization, Estates at its option may exercise any and all of its rights and remedies provided by law and terminate

² Additional services are charged at the published rates used by estates. The published rates were not submitted into evidence.

resident's right of possession and repossess the premises without further demand or notice to the resident. (Applicant's Ex. No. 4)

29. The contract is non-assignable by the resident. The resident is responsible for a prorata portion of general real estate taxes, if any, as assigned against Lutheran Estates Organization. The real estate taxes (if ever applicable) are included in the monthly service fee. (Applicant's Ex. No. 4)

30. Residency is available to persons sixty-two or older that meet the physical and mental independent living requirements, financial resource requirements, and other terms of the agreement. A resident's age, physical health, cognitive abilities, and application for residency constitute a material part of the agreement and any material representations or omissions constitute grounds for Lutheran Estates Organization to rescind the agreement. Estates reserve the right to screen residents for medical and financial appropriateness and deny residency based upon a resident's inability to meet the independent living requirements. (Applicant's Ex. No. 4)

31. The entry fee charged is also associated with the development and use of the community center, much like a condominium setting. (Tr. p. 65)

32. Lutheran Estates Organization recognizes a financial gain that is used for further development of the campus. Its budget was approximately five million dollars with a profit realized³. (Tr. pp. 64-65, 69-70)

33. Management becomes aware of a resident's financial difficulties through a social worker or the manager in the retirement center. Management negotiates with the resident and family, if applicable, to cover the costs of the monthly fee. At the time of the hearing, there were 23 Medicaid residents residing in the nursing home, a facility not located on the subject property.

³ The only financial statement submitted was for Lutheran Estates Organization for the period ending July 31, 1999, and had to do with income for the beauty and barbershop and duplexes. As the duplexes and beauty and barbershop are not on the subject property, no weight was given to this evidence. (Dept. Ex. No. 1) Applicant also submitted the Lutheran Senior Ministries Campus Development expense sheet for 1999 establishing expenditures of \$856,666.89. (Applicant's Ex. No. 2)

The nursing home is the only licensed care facility on the entire property that qualifies for Medicaid. (Tr. pp. 70, 73, 76-78, 107)

34. Residency in the units is available to persons regardless of race, religion, national origin, sex or handicap. The applicant has no shareholders, and no financial benefit is derived from any of the five corporations to any individual. There are 24 congregations that support the Ministries. The sponsor congregations contribute to Lutheran Senior Ministries primarily for benevolence for those people who have exhausted their resources and do not have the ability to pay for living on the 28 acre campus. (Tr. pp. 65-66, 75, 101)

CONCLUSIONS OF LAW:

Article IX, §6 of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

This provision is not self-executing but merely authorizes the General Assembly to enact legislation that exempts property within the constitutional limitations imposed. City of Chicago v. Illinois Department of Revenue, 147 Ill.2d 484 (1992)

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956) Whenever doubt arises, it is to be resolved against exemption and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1941). Further, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967)

Pursuant to the constitutional grant of authority, the legislature has enacted provisions for property tax exemptions. At issue is the provision found at 35 **ILCS** 200/15-65, which exempts certain property from taxation as follows:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

- (a) Institutions of public charity.
- (b) Beneficent and charitable organizations incorporated in any state of the United States, . . .
- (c) Old people's homes, facilities for persons with a developmental disability, and not-for-profit organizations providing services or facilities related to the goals of educational, social and physical development, if, upon making application for the exemption, the applicant provides affirmative evidence that the home or facility or organization is an exempt organization under paragraph (3) of Section 501(c) of the Internal Revenue Code . . . and either (i) the bylaws of the home or facility or not-for-profit organization provide for a waiver or reduction, based upon an individual's ability to pay, of any entrance fee, assignment of assets, or fee for services

The appropriate exemption applies to "institutions of public charity." Our courts have long refused to apply this exemption absent suitable evidence that the property in question is owned by an "institution of public charity" and "exclusively used" for purposes which qualify as "charitable" within the meaning of Illinois law. Methodist Old Peoples Home v. Korzen, 39 Ill.2d 149, 156 (1968) (hereinafter referred to as "Methodist Old Peoples Home"). They have also ascribed to the following definition of charity originally articulated in Crerar v. Williams, 145 Ill. 625 (1893), as "a charity is a gift to be applied consistently with existing laws, for the benefit of an indefinite number of persons, persuading them to an educational or religious conviction, for their general welfare - or in some way reducing the burdens of government." *Id.* at 643

The Illinois Supreme Court has effectuated this definition by observing that all institutions of public charity share the following distinctive characteristics:

The organization:

- 1) must benefit an indefinite number of persons, persuading them to an educational or religious conviction, for their general welfare-or in some way reduce the burdens of government;
- 2) must have no capital, capital stock, or shareholders and earn no profits or dividends;
- 3) must derive its funds mainly from public and private charity and hold such funds in trust for the objects and purposes expressed in their charters;
- 4) must dispense charity to all that need and apply for it, and must not provide gain or profit in a private sense to any person connected with it; and,
- 5) must not place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits dispensed; and
- 6) the term “exclusively used” means the primary purpose for which the property is used and not any secondary or incidental purpose. Methodist Old Peoples Home at 157.

Although the criteria cited in Methodist Old Peoples Home are not an exclusive rigid formula, they are guidelines that help to analyze whether an applicant is a charitable organization. Du Page Co. Bd. of Rev. v. Joint Comm'n, 274 Ill.App.3d 461 (2nd Dist. 1995, *leave to appeal denied* 164 Ill.2d 561)

The Lutheran Home of Greater Peoria, as this applicant was known prior to February, 1998, was granted a property tax exemption pursuant to Docket Nos. 86-72-312 and 86-72-313 for a 50 resident retirement center and a 72 bed skilled nursing facility. (Dept. Ex. No. 1) In those cases, the Department determined that neither of the facilities charged a founder's fee, entrance fee, or application fee. The applicant never denied admission to either of the facilities on the basis of an inability to pay and never discharged anyone from the facility due to lack of funds.

Although other property of the applicant may have previously qualified for exemption, that does not mandate that I find the subject properties exempt. In fact, that determination has no relevance to the proceeding before me. Since a cause of action for taxes for one year is not the same as or identical with a cause of action for taxes for subsequent years, the decision that property was taxable in certain years is not *res judicata* as to status of property during subsequent years. A property owner may be required to litigate the issue of its exempt status annually. Jackson Park Yacht Club v. Department of Local Government Affairs, 93 Ill.App.3d 542 (1st Dist. 1981), Application of County Collector of Du Page County, 157 Ill.App.3d 355 (2nd Dist. 1987); Hopedale Medical Foundation v. Tazewell County Collector, 59 Ill.App.3d 816 (3rd Dist. 1978) *cert. denied* 440 U.S. 916 (1979); Du Page County Bd. Of Review v. Joint Commission on Accreditation of Healthcare Organizations, 274 Ill.App.3d 461 (2nd Dist. 1995) *leave to appeal denied* 164 Ill. 2d 561; People ex rel. Tomlin v. Illinois State Bar Association, 89 Ill.App.3d 1005 (4th Dist. 1980). Therefore, the applicant herein must prove that the property at issue is owned by a charitable organization and used for charitable purposes.

Initially, it is noted that the legal owner of the property is the applicant, Lutheran Home, Inc. Applicant is but one of a number of corporate subsidiaries of Lutheran Senior Ministries, along with Lutheran Estates Organization, a corporation that administers the living facilities on the subject property. Although the subsidiaries are separate corporations, the testimony at the hearing failed to distinguish between the activities of the various corporations. For example, applicant's financial information was not presented at hearing, as opposed to the offer of financials for the Lutheran Estates Organization and the costs of campus development for Lutheran Senior Ministries. Additionally, the construction management contract offered into evidence by the applicant indicates the "owner" of the property at issue as Lutheran Senior Ministries rather than the applicant. (Applicant's Ex. No. 1) This co-mingling of corporate identities certainly makes it more difficult to ascertain whether the property at issue was in exempt ownership and exempt use for the year in question; however, the evidence of record is such that the inter-relations of the

various corporations does not cause my conclusion to be anything other than that, at the very least, the property was not in exempt use during 1999.

To begin, in analyzing applicant's ownership of the subject property under the guidelines set forth in Methodist Old Peoples Home, by virtue of its 501(c)(3) designation from the Internal Revenue Service, I find that applicant has established that it has no capital, capital stock, or shareholders.

At the end of 1998 the applicant terminated the farming lease on the subject property and began the preparation and first phase of the construction of the apartment building, mansions, patio homes, and community center on the premises. Applicant holds title to the property and improvements, but it is the residents who, by contract, pay the construction costs of the living units erected on the property. The representative contract admitted into evidence required that the potential resident pay an entrance fee of \$280,986.00 for a patio home. Therefore, the resident was required to pay for the construction of the living unit that the resident does not own. In addition, a monthly maintenance fee⁴ of \$875.00 plus \$75.00 for an additional person is charged, due when the unit is available for occupancy. Those rates are subject to change by Lutheran Estates Organization, the corporate entity that enters into contracts for the living units. There is nothing in the contract submitted by applicant that alerts the resident that there is a waiver provision or financial assistance for these fees. In fact, there was no waiver provision for the entry process in 1999 or 2000, the year of the hearing. (Tr. p. 104) Nor did the applicant submit any evidence of a waiver of any fees on the subject property in 1999.

For the apartments to be erected on the subject property, Lutheran Estates Organization requires an entrance fee of at least \$100,000.00. The entrance fees for the mansions were not established; however, the entrance fees for the duplexes range from \$145,000.00 to \$175,000.00, also an "up front" requirement. There is

⁴ The applicant did not establish the amounts of monthly maintenance fees for the mansions, apartments, or duplexes.

no provision for waiver or reduction of those entrance fees based on the inability of a potential resident to pay the costs.

An administration fee of \$500.00 plus additional amounts are charged if the resident defaults on the occupancy contract. A 1% late payment fee is charged by the 5th of the month for any delinquent fees. Applicant has the right to terminate the contract on the residence for late payment of fees and remove the resident. Additional fees are charged for housekeeping, the beauty and barbershop, maintenance, and additional services. There is no right of the resident to sublet the living unit. There has been no indication that any of applicant's fees or requirements regarding the subject property would have been waived in 1999.

If a resident is temporarily admitted to the nursing home or assisted living facility, the resident is still responsible for the basic monthly fee and charges, according to the contract submitted. Only after it has been determined that the admission to those facilities is permanent and the residence is available for re-occupancy does the resident's responsibility for the basic monthly fee cease.

If a resident moves out, Lutheran Estates Organization retains a maximum of 10% of the initial sales price of the property. The applicant restricts the new purchase of the property by requiring that the new purchaser pay the market value of the property and agree that applicant will retain a portion of that price. Again, a prospective purchaser must be able to afford the market value sales price of the property as well as the monthly fees. Actually, applicant specifically targeted purchasers within particular age and income parameters.

Illinois courts have concluded that where most residents are required to pay a substantial amount of "prepaid rent" that requirement clearly represents an obstacle to the receipt of the benefits offered by an old people's home and have determined that this situation does not qualify for a property tax exemption. Good Samaritan Home of Quincy v. Illinois Department of Revenue, 130 Ill.App.3d 1036 (4th Dist. 1985). The entrance fees established for the residences on the subject property ranged from \$100,000.00 to \$280,986.00 in 1999. These are certainly substantial amounts, and they do not even include the monthly service fee the resident is required to pay in order to live in the independent living units - units that they did not own.

The facts in this matter are strikingly similar to those in Wyndemere Retirement Community v. Department of Revenue, 274 Ill.App.3d 455 (2nd Dist. 1995), *rehearing denied, leave to appeal denied* (164 Ill.2d 585). Wyndemere Retirement Community, an Illinois not-for-profit corporation was developing a 216-unit life care community for the elderly in Wheaton, Illinois. It offered its residents easily accessible one, two and three bedroom apartments, in addition to age appropriate programs and services. The facility also would include such amenities as a convenience store, beauty and barber shops, exercise, medical, bank, and postal facilities. *Id.* at 456

The residents at Wyndemere did not own their units, but, rather, paid an entrance fee based on the size of their apartment. These fees ranged from \$99,000.00 to \$285,000.00. In addition, the residents paid a monthly fee to cover such services as housekeeping, laundry service, cable television, utilities, meals, and transportation. A percentage of the monthly fee was allocated to cover the residents' future health care needs. *Id.*

A potential Wyndemere resident filled out a detailed application eliciting financial and health information, as Wyndemere residents were required to be able to live independently when beginning a residency. *Id.* at 457. Once qualified and admitted, the resident was allowed to remain even if his health declined, and even if he could no longer pay the monthly fee or other charges. If a resident transferred to a long-term-care facility, he would remain responsible for the monthly fee to Wyndemere. If a permanent move to a long-term facility was necessary, the resident's unit was "resold" with 75% of the market value placed into an account for his benefit. Any outstanding fees owed to Wyndemere would be taken from this account. *Id.*

Unlike this applicant, Wyndemere did have a written charitable policy; however, the amount of charity provided was *de minimus*, with the potential for continued charity on the premises speculative, at best. *Id.*

In applying the guidelines set forth in Methodist Old Peoples Home, that court found that the substantial fees charged by Wyndemere, the fact that it did not derive its funds mainly from public and

private charity, and the fact that obstacles were placed in the way of those seeking charitable benefits, precluded the court from granting Wyndemere a sales tax exemption as a charitable organization. The court stated:

Charging fees and rendering benefits to persons not poverty-stricken does not destroy the charitable nature of an organization, but this is only true to the extent that the organization also admits persons who need and seek the benefits offered but are unable to pay. Small v. Pangle, 60 Ill.2d 510 (1975)

Additionally, we find that Wyndemere failed to show that obstacles would not be placed in the way of those seeking the charitable benefits or that the primary purpose for which the property is used is for charitable purposes. It is clear from the record that the primary purpose of Wyndemere is not to provide charity, but to provide a certain enhanced lifestyle to the elderly who can afford to pay for it. *Id.* at 460-61.

In this instant matter, the feasibility study commissioned by the applicant for the subject property and completed in September, 1997, analyzes the market area by income and age, and is premised on the fact that a prospective resident would have sufficient financial resources (\$15,000.00 to \$75,000.00 income plus the equity from a current home) to meet the required entrance fee and monthly service requirements, depending upon the type of living unit selected.⁵ (Applicant's Ex. No. 1) It also provides that households with less than the minimum annual income could meet the monthly services and other living expenses by using such other resources as "support from family members, etc.". *Id.* Although there was testimony regarding the use of interest accrued in an endowment fund, the fund is to be used for indigent care or capital investment. Capital investment is not a charitable use of the fund. The applicant has no provisions to use the endowment fee for prospective residents. There was no evidence presented that the fund had been utilized for persons intending to live on the subject property. In fact, the specific evidence of record is that there is no provision for a waiver of fees in the entry process. (Tr. p. 104) As did Wyndemere, there is simply no question that applicant's targeted resident was financially independent, with no need for applicant's charity.

⁵ The market feasibility study by Unicus Incorporated for The Lutheran Home of Greater Peoria is part of Applicant's Ex. No. 1, pp. 11-33. *See also* Tr. pp. 43-44.

Further, the entry fees for units on the subject property, are based on the fair market value of such units, and are intended to cover the costs of development of the units. (Tr. p. 64, Jaeger's testimony that original units on other parts of the 28 acres were sold at a loss because soft costs of development were not taken into consideration, a situation corrected for units on the subject property; Tr. pp.105-6, Jaeger's testimony that entry fees based on fair market value) As was the case in Wyndemere, such policies do not allow the applicant to benefit an indefinite number of persons for their general welfare. It also places a restriction on those who wish to avail themselves of any charity the applicant might dispense.

Applicant found out about financial problems of residents in the assisted living or nursing home facilities, on property not at issue, through the social worker or manager for the retirement center. The oral testimony was that applicant negotiated with the resident of those areas to cover the cost of the monthly fees. (Tr. p. 77)

This policy is not in writing or contained in the applicant's bylaws or articles of incorporation. It is well settled in Illinois that the character and purpose for which a corporation is organized must be ascertained from its articles of incorporation. People v. Wyanett Light Co., 306 Ill. 377 (1922), and also, Rotary International v. Paschen, 14 Ill.2d 480 (1958). The statute requires that the bylaws of the home or facility or not-for-profit organization provide for a waiver or reduction, based upon an individual's ability to pay, of any entrance fee, assignment of assets, or fee for services. Unlike Wyndemere's written charitable policy, applicant has none. However, even with a written policy, Wyndemere was determined not to qualify as operating as a charity because the charitable practice was obviously speculative and *de minimus* at best. The evidence of record does not support even Wyndemere's level of charity on the same type of property use.

Applicant, in a manner similar to Wyndemere, restricts its residents to persons 62 years of age or older who must meet physical and mental independent living requirements, financial resource requirements, and other terms of the occupancy agreement. Applicant reserves the right to screen residents for medical and financial appropriateness and deny residency based upon a potential resident's inability to meet the

independent living requirements. The applicant has not established that any of those amounts or criteria would have been or were waived in 1999.

The fact that applicant had no provision for waiver of its entry fees in 1999 for the subject property, coupled with applicant's stringent health requirements, establish that the applicant is not an organization that benefits an indefinite number of persons or reduces the burdens of government. Nor does applicant dispense charity to all that need and apply for it. In addition, those requirements place obstacles in the way of those needing and seeking the benefits applicant provides. There is nothing in applicant's by-laws or contractual obligation with the residents to compel them to legally maintain a resident if they become indigent, sick, or unmanageable and, in fact, in the termination portion of the contract submitted, applicant reserves the right to discharge such people.

Applicant's village complex is operated by Lutheran Estates Organization like a business. The cost of the units occupied by the residents is comparable to the cost of similar ones in the area. The residents pay substantial up-front costs for the use of property that they do not even own. Applicant retains legal and equitable title to the residence and the property. Lutheran Estates Organization receives the cost of construction of the residence. Although, when the resident moves out, Lutheran Estates Organization or applicant keeps at most 10% of the original selling price of the property, during the period that the residence was occupied Lutheran Estates Organization retains the purchase price of the dwelling, collects monthly fees, and keeps any interest that accumulates. Lutheran Estates Organization can then resell the residence for the current market price knowing that it will again receive a portion of that price, monthly fees, interest, and any increase in the amount of the selling price. Lutheran Estates Organization recognized a financial gain in 1999 in part because Estates increased its entry fee program for the subject property because entry fees charged for units already constructed elsewhere on the 28 acres were less than necessary to cover development costs. (Tr. p. 64)

It is clear from the above that applicant failed to carry its burden proving entitlement to a property tax exemption for 1999 on the issues of whether it operates as a charity and makes charitable use of

the property. Therefore, it is not necessary to determine whether applicant's physical activity on the property was sufficient for exemption purposes pursuant to Weslin Properties, Inc. v. Department of Revenue, 157 Ill.App.3d 580 (2nd Dist, 1987).

In conclusion, it cannot be said that applicant is charging prospective residents of units to be located on the subject property insignificant amounts of money. The reality of the situation is that the operation of applicant's retirement village is only available to affluent older people. Admittedly the population is getting older and applicant is targeting a group of people that are going to need living quarters adapted to the special needs of the elderly. However, that alone does not satisfy the requirement that the applicant benefits an indefinite number of people. Applicant has not shown that it does not place obstacles in the way of persons who need and would avail themselves of the benefits applicant dispenses. In reality, as observed in the Wyndemere case, the substantial amount of money that is required to live in applicant's residences places a large obstacle in the way of most elderly. These are some of the points discussed that make it evident that applicant has placed a limitation on the requirement that the use of the property should benefit an indefinite number of people and that the use of the property is charitable.

Nor is there evidence that applicant derives its funds from public and private charity. Quite the opposite is the reasonable conclusion drawn from the evidence of record. While there is testimony that congregations and third party donors contribute to the Lutheran Senior Ministries (Tr. pp. 66-7), there is nothing of record to show how much of the operations of the Senior Ministries is funded by these means. Similarly, whereas an endowment fund was established in 1998, it is unclear under which corporate entity it exists or is controlled, and further, there is no evidence that the monies therefrom will be used by this applicant for the subject property. Certainly, applicant used none of the endowment fund money in 1999 for the property. What is established by the evidence of record is that the costs for the development of the subject property is intended, by applicant, to be borne by the residents of the units to be built on that property. Again, applicant fails to satisfy another of the criteria established by Methodist Old Peoples Home for qualification as a charitable organization using the property for charitable purposes, namely that there are

no obstacles placed in the way of those who need and would avail themselves of applicant's charitable benefits. I therefore conclude from the record presented, that the applicant is not a charitable organization and the use of the subject real property is not for charitable purposes.

It is therefore recommended that Peoria County Parcel Index No. 14-10-378-005 remain on the tax rolls for the 1999 assessment year and be assessed to the applicant, the owner thereof.

Respectfully Submitted,

Date: May 16, 2002

Barbara S. Rowe
Administrative Law Judge